

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

\_\_\_\_\_  
IN RE VISA CHECK/MASTERMONEY  
ANTITRUST LITIGATION  
\_\_\_\_\_

MASTER FILE NO. CV-96-5238

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This Document Relates To:  
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(Gleeson, J.) (Orenstein, M.J.)

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ALL ACTIONS  
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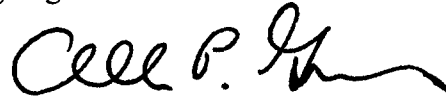
**DECLARATION OF ALLEN P. GRUNES**

I, Allen P. Grunes, hereby declare that:

1. I am an attorney with the Antitrust Division of the United States Department of Justice. I submit this declaration in connection with the United States' Memorandum of Law in Support of Government Merchants' Participation in the Distribution of the Net Settlement Funds.
2. Attached as Exhibit A is a true and correct copy of pages 1 and 2 of Defendants' Petition for Review under FRCP 23(f), dated March 8, 2000, and filed with the United States Court of Appeals for the Second Circuit.
3. Attached as Exhibit B is a true and correct copy of a March 20, 2000 article in BNA Antitrust & Trade Regulation Daily News.
4. Attached as Exhibit C is a true and correct copy of pages 25 and 26 of the transcript of the February 5, 2001 hearing before the United States Court of Appeals for the Second Circuit on Defendants' Appeal of the Order Granting Class Certification.
5. Attached as Exhibit D is a true and correct copy of the "Notice of Pendency" that was received by Government Merchants in the above-captioned action. This particular copy is from the files of the United States Postal Service.
6. Attached as Exhibit E is a true and correct copy of Stephen T. Middlebrook's Declaration, dated March 21, 2006.
7. Attached as Exhibit F is a true and correct copy of a letter from Polly A. Dammann of the Civil Division of the United States Department of Justice, to Plaintiffs' Counsel, Constantine & Partners, *et al.*, dated November 14, 2002.

8. Attached as Exhibit G is a true and correct copy of a letter from Mary Anne Gibbons of the United States Postal Service to the Garden City Group, dated November 14, 2002.
9. Attached as Exhibit H is a true and correct copy of the first two pages of a Notice of Estimated Cash Payment & Claim Form that Government Merchants received in the above-captioned action. This particular document is from the files of the Navy Exchange Service Command.
10. Attached as Exhibit I is a true and correct copy of Melanie Fix's Declaration, dated March 17, 2006.
11. Attached as Exhibit J is a true and correct copy of the Complaint dated January 22, 1985 filed in *New York v. Salem Sanitary Carting Corp.*, Civ. Act. No. 85-0208 (E.D.N.Y.).

I declare under penalty of perjury that the foregoing is true and correct. Executed this 21st day of March 2006 in Washington, D.C.

A handwritten signature in black ink, appearing to read "Allen P. Grunes", written over a horizontal line.

Allen P. Grunes (AG 4775)

# **EXHIBIT A**

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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IN RE  
VISA CHECK/MASTERMONEY ANTITRUST  
LITIGATION

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E.D.N.Y.  
Master File No.  
CV-96-5238  
(Gleeson, J.) (Mann, M.J.)

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THIS DOCUMENT RELATES TO:  
ALL ACTIONS

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PETITION FOR REVIEW UNDER FRCP 23(f)

**HELLER EHRMAN WHITE & MCAULIFFE LLP**

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Stephen V. Bomse  
Marie L. Fiala  
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Counsel for Petitioner-Defendant  
Visa U.S.A. Inc.

**CLIFFORD CHANCE ROGERS & WELLS LLP**

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(212) 878-8000

Counsel for Petitioner-Defendant  
MasterCard International  
Incorporated

Dated: March 8, 2000

I. PRELIMINARY STATEMENT

Visa U.S.A. Inc. ("Visa") and MasterCard International Incorporated ("MasterCard") (jointly "Petitioners") respectfully seek leave pursuant to Rule 23(f) of the Federal Rules of Civil Procedure to appeal from the district court's order granting class action certification in these consolidated proceedings. *In re Visa Check/MasterMoney Antitrust Litigation*, No. 96-CV-5238 (E.D.N.Y.), Memorandum and Order, February 22, 2000 ("Class Order") (attached hereto as Exhibit A).<sup>1</sup> That decision, certifying the largest class in a tying case of which we are aware, poses a risk of "potentially ruinous liability" to Petitioners. Fed. R. Civ. P. 23(f) Committee Note. Recognizing that the Petitioners' financial risks have been "increased drastically" by certification and that plaintiffs' certification motion "raise[d] substantial and novel questions involving the standards a district court should apply in evaluating a class motion and the interaction of those standards with antitrust principles," the district court urged this Court to allow an interlocutory appeal of its certification order. (Class Order at 44.)

The class certified in this case includes all retail merchants -- from mass merchandisers to high-end department stores, corner groceries, the United States Government, internet vendors and mail

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<sup>1</sup> The Class Order was signed on February 22 but entered on February 24, 2000, making this petition timely under Fed. R. Civ. P. 23(f).

order houses -- in the United States who have chosen to accept Visa and/or MasterCard brand payment cards (along with, in varying degrees, cash, checks, ATM cards, etc.) as payment for their respective goods and services. According to the allegations of the complaint, Petitioners' rules oblige each of these merchants to accept all Visa or MasterCard-branded cards and prohibit merchants from discriminating among such cards on any basis, such as, for example, the identity of the bank that issued the card. Merchants also may not refuse to accept particular Visa or MasterCard cards on account of the terms of a cardholder's agreement with her issuing bank including, specifically, whether the cardholder has elected to settle her account by authorizing the bank to withdraw funds directly from her account (a so-called "debit" card), or has chosen to be billed monthly with an option to pay her account in full or to revolve a portion of the outstanding balance and pay a finance charge (a so-called "credit" card). Despite the fact that such arrangements between the card-issuing bank and its cardholders have no bearing upon whether, when or how the merchant is reimbursed by the MasterCard or Visa systems, plaintiffs contend that Petitioners' requirements that participating merchants "honor all cards" is an unlawful tying arrangement and is, in addition, the mechanism by which Petitioners seek to monopolize the market for so-called debit card payment services.

We leave for another day how the very feature that defines Visa and MasterCard cards (universality of acceptance) could constitute a tie-in or give rise to a claim of attempted monopolization. The issue

# **EXHIBIT B**

3/20/2000 ATD d2

BNA Antitrust & Trade Regulation Daily  
News  
March 20, 2000

JURISDICTION AND PROCEDURE: VISA, MASTERCARD URGE SECOND CIRCUIT TO  
REVIEW  
ORDER FOR CLASS CERTIFICATION

WASHINGTON (BNA) -- Visa U.S.A. Inc. and MasterCard International Inc. are seeking leave to appeal a class certification order in litigation accusing them of violating federal antitrust law by using their "honor all cards" rule to illegally tie their branded credit cards and debit cards and to attempt to monopolize the market for debit card payment services, according to a petition for review under Fed.R.Civ.P. 23(f) filed in the U.S. Court of Appeals for the Second Circuit (In re Visa Check/MasterMoney Antitrust Litigation, 2d Cir., 3/8/00).

The certified class, the petition notes, consists of four million retail merchants, "from mass merchandisers to high-end department stores, corner groceries, the United States Government, Internet vendors and mail order houses," who have agreed to accept Visa (R) and/or MasterCard (R) cards as payment for their respective goods and services.

Under the defendants' "honor all cards" rule, class members must agree to accept both branded credit and debit cards and to pay the same interchange fee on these "off-line" transactions, in which a transaction is completed by obtaining the customer's signature and using the merchant's existing credit card system.

The class alleged that the defendants' interchange fee on debit transactions is priced at supracompetitive levels, much higher than on-line transactions such as MOST (R) cards, and is passed on to merchants from their banks. The plaintiffs' damages are estimated at \$8 billion before trebling.

Five Purported Errors.

The petition argues that class certification is improper for five reasons:

- . The district court failed to perform its gatekeeper role and "to scrutinize adequately whether plaintiffs' expert report is based upon plausible or realistic assumptions";

- . A class action is unmanageable "because plaintiffs cannot prove damages on a classwide or formulary basis";

- . Litigation by the named plaintiffs is a superior method for the fair and efficient adjudication of this controversy;



Since damages are at least as important as injunctive relief, the certification under Rule 23(b)(2) "warrants" the Second Circuit's attention; and

A class certification "in a case of this magnitude" has immediate and substantial consequences to the defendants, drastically increasing the financial risks of the litigation and creating pressures to settle that are "grossly out of proportion with the actual merits of plaintiffs' claims."

#### Gatekeeper Role.

The first ground is stressed by the defendants, who argue that the district court should have stricken the report of the plaintiffs' expert, Dennis W. Carlton, an economics professor at the University of Chicago.

Carlton maintained that three issues in the case can be resolved on a class-wide basis--whether credit and debit cards are distinct products, whether the defendants have market power in credit cards, and whether the alleged tie injures all class members.

The defendants argue that Carlton's report departs from the theory of the complaint on the issue of injury-in-fact and rests on an implausible economic theory having little empirical support, despite two years of discovery and the exchange of millions of pages of documents.

"According to the Complaint," the petition states, in a "but-for" untied world, "merchants universally would have declined to accept Petitioners' debit cards, preferring and receiving checks, cash or on-line debit instead." In the actual world, however, a merchant's decision about whether to reject such cards "depends upon such merchant-specific facts as what other payment devices a merchant accepts, at what cost, and with what consequence for lost sales and profits." Since the plaintiffs recognized that this merchant-specific inquiry would be inconsistent with class certification, they advanced an alternative theory of impact--Dr. Carlton's theory of "overcharge injury," which rests "on a mistaken analogy between this case and horizontal price-fixing cases."

Dr. Carlton, the defendants explain, "posited in his opening declaration that, absent the purported tying arrangement, some retailers would have refused to accept Visa and MasterCard-branded debit cards. In response, Visa and MasterCard would have substantially reduced their debit interchange rates to 'maintain merchant acceptance of the cards.' ... According to Dr. Carlton's theory, merchants have suffered injury-in-fact because they have paid higher fees for Visa and MasterCard debit cards than they would have absent the tie. That allegedly common injury, says Dr. Carlton, can be established on a class-wide basis."

The district court ruled that Carlton's report was admissible at the class action stage as an aid to the court in deciding whether the plaintiffs had satisfied the requirements of class certification. The weighing of evidence is not appropriate at this stage, the court noted, citing the Second Circuit's recent decision *Caridad v. Metro-North Commuter RR*, 191 F.3d 283 (2d Cir.

1999), petition for cert. filed, (Dec. 17, 1999).

The district court, the defendants maintain, "plainly felt constrained by the proscription against evaluating the merits," as well as by Caridad. "It therefore largely limited its evaluation to Dr. Carlton's credentials and to whether he appeared to employ 'the type of methodology and data used and accepted' in antitrust cases, while refusing to conduct any meaningful 'weighing' of Dr. Carlton's opinion-even within its four corners, let alone measured against the 'dueling' opinion of Visa's expert, Dean Richard Schmalensee [of the Massachusetts Institute of Technology]."

The defendants argue that the district court erroneously viewed the admissibility of an expert report "as a two-stage process in which considerable deference is given to plaintiffs' expert report at the class certification stage, with a more searching inquiry reserved for a later stage of the case, when the actual admissibility of Carlton's testimony is sought or when plaintiff's attempt to prove their 'common theory of injury.'"

The district court, the petition argues, should "play[] a vital gatekeeping function at any stage of the proceedings where the persuasiveness of an expert's opinion is at issue. The court should assess the plausibility of Carlton's theories because "his report was, as the district court acknowledged, principally an exercise in theorizing."

Visa and MasterCard maintain that now is the time for the retailers to prove their "common theory of injury." Although "Rule 23 certification is provisional, the law is clear that plaintiffs are not merely expected, but required, to make their showing on each of Rule 23's requirements when they first seek certification."

The petition also details the defendants' version of the rigorous analysis assertedly required of a district court. The defendants contend that the case should not have been certified without considering Dr. Schmalensee's declaration. Among other things, they point to an economic theory that a tying arrangement can never cause injury in fact. "In a tying case," the petition opines, "one begins with an assumption of market power, i.e. power over the tying product." A tied item cannot be used to increase market power. In most cases, a manufacturer thus cannot charge more for the package than for the items sold separately.

3/20/2000 ATD d2

END OF DOCUMENT

# **EXHIBIT C**

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00-7699

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IN THE  
United States Court of Appeals

FOR THE SECOND CIRCUIT

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IN RE: VISA CHECK/MASTERMONEY ANTITRUST LITIGATION

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WAL-MART STORES, INC., LIMITED, INC., SEARS ROEBUCK & COMPANY, SAFEWAY INC., CIRCUIT  
CITY STORES, INC., NATIONAL RETAIL FEDERATION AND THE FOOD MARKETING INSTITUTE,  
INTERNATIONAL MASS RETAIL ASSOCIATION, and All Similarly Situated Persons,

*Plaintiffs-Appellees,*

--v.--

VISA U.S.A. INC. AND MASTERCARD INTERNATIONAL INCORPORATED,

*Defendants-Appellants.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

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TRANSCRIPT OF THE HEARING ON DEFENDANTS-APPELLANTS' APPEAL OF  
THE ORDER GRANTING CLASS CERTIFICATION

BEFORE

THE HONORABLE DENNIS G. JACOBS

THE HONORABLE SONIA SOTOMAYOR

THE HONORABLE DENISE COTE

FEBRUARY 5, 2001

MANHATTAN, NEW YORK

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APPEARANCES:

For the Plaintiffs-Appellees:

Lloyd Constantine, Esq.

For the Defendants-Appellants:

Stephen Bomse, Esq.

Kenneth Gallo, Esq.

Transcript made from the electronic audio recording of the proceedings.

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BARRISTER REPORTING SERVICE, INC.  
120 Broadway  
New York, N.Y. 10271  
212-732-8066

1                   your adversary.

2                   MR. BOMSE: Thank you very  
3                   much.

4                   MR. CONSTANTINE: Good  
5                   morning. My name is Lloyd  
6                   Constantine. I think the first thing  
7                   I should say is that I'm not ready to  
8                   do that. Because if I did that, then  
9                   obviously if you could not certify a  
10                  class in this case because the  
11                  adequacy of representation prompted  
12                  nothing then. So I'm not prepared to  
13                  do that.

14                  I proudly represent Wal-Mart,  
15                  Circuit City, The Limited, Safeway  
16                  and Sears Roebuck. I also represent  
17                  13 very small retailers such as  
18                  Bernie's Army Navy Store. I  
19                  represent the three largest retail  
20                  trade associations in the United  
21                  States. And most importantly today,  
22                  I represent a class of 4 million  
23                  merchants, each who has signed an  
24                  identical contract which requires  
25                  them to purchase Visa and MasterCard

1 off-line point of sale debit card  
2 services at prices set at 10 to 20  
3 times the price charged by their  
4 on-line debit network competition.

5 Now, Judge Gleeson certified  
6 this class a full year ago in  
7 February and did so finding that  
8 without class certification, millions  
9 of small merchants would be deprived  
10 of any monetary remedy for  
11 defendants' allegedly illegal  
12 conduct.

13 And he also found that without  
14 class certification, there would be  
15 numerous motions to intervene in this  
16 case from the nation's largest  
17 retailers. In the same decision,  
18 Judge Gleeson also denied the Daubert  
19 motion and on that one he said that  
20 the defendants had fallen quote "far  
21 short" of the required showing. And  
22 he did so on the basis of a record of  
23 some 3,000 pages which had been  
24 culled from the entire discovery  
25 record of 5 million pages of

# **EXHIBIT D**

SEP-24-2002 11:59

P.02/05

**VISA CHECK/MASTERMONEY ANTITRUST LITIGATION: IMPORTANT LEGAL NOTICE TO ALL CLASS MEMBERS,  
FORWARD TO CORPORATE HEADQUARTERS/LEGAL COUNSEL**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

IN RE:

VISA CHECK/MASTERMONEY  
ANTITRUST LITIGATION

This Document Relates To:

ALL ACTIONS

MASTER FILE NO.  
CV-96-5238

(Gleeson, J.) (Mann, M. J.)

**NOTICE OF PENDENCY OF CLASS ACTION**

**TO: ALL PERSONS AND BUSINESS ENTITIES IN THE UNITED STATES WHO, AT ANY TIME SINCE OCTOBER 24, 1992, HAVE ACCEPTED VISA AND/OR MASTERCARD CREDIT CARDS FOR PAYMENT AND HAVE THEREFORE BEEN REQUIRED TO ACCEPT VISA AND/OR MASTERCARD-BRANDED DEBIT CARDS (ALSO KNOWN AS VISA CHECK, MASTERMONEY OR MASTERDEBIT CARDS) FOR PAYMENT (THE "CLASS").**

**THIS NOTICE MAY AFFECT YOUR RIGHTS  
PLEASE READ IT CAREFULLY**

1. This Notice is directed to you because your rights may be affected by the class action pending in the United States District Court for the Eastern District of New York styled *In re Visa Check/MasterMoney Antitrust Litigation*, No. CV-96-5238 (the "Action").

**HISTORY OF THE ACTION**

2. The Action began in 1996 with the filing of lawsuits by certain retailers and retail trade associations (collectively, the "Plaintiffs") against Visa U.S.A. Inc. ("Visa") and MasterCard International Incorporated ("MasterCard") (collectively, the "Defendants"). Those lawsuits have been consolidated, and the Court has appointed the New York, New York based law firm of Constantine & Partners to serve as Lead Counsel, and the Seattle, Washington based law firm of Hagens Berman LLP to serve as Co-Lead Counsel for the Plaintiffs. The Plaintiffs in the Action, who represent the Class certified by the Court, are: Wal-Mart Stores, Inc.; The Limited, Inc.; Sears Roebuck & Co.; Circuit City Stores, Inc.; Safeway, Inc.; Auto-Lab of Farmington Hills; Bernie's Army Navy Store; Burlington Coat Factory Warehouse Corporation; The Coffee Stop, Inc., d/b/a Torrero Coffee & Tea Company; Computer Supplies Unlimited; Denture Specialists, Inc.; Payless ShoeSource, Inc.; Shoes Etc., Inc., d/b/a Arnold's Shoes; Scrub Shop, Inc.; Sportstop, Inc.; UCC Kwik Doc, Inc., f/k/a UCC Express, Inc.; and Geneva White, D.M.D., P.A. The first (or lead) case was filed by a group of merchants represented by Constantine & Partners that included Wal-Mart, The Limited, Sears, Circuit City and Safeway; the lead case and the consolidated Action have sometimes been referred to as the "Wal-Mart case" or the "Wal-Mart action." Three merchant trade associations, National Retail Federation, International Mass Retail Association, and Food Marketing Institute, are also plaintiffs in the lead case (and the consolidated Action).

3. The allegations against Visa and MasterCard are set forth in the Second Amended Consolidated Class Action Complaint filed with the Court on May 26, 1999. Plaintiffs claim that Visa and MasterCard, individually, and in conspiracy with each other and with their member banks, have violated the federal antitrust laws by forcing merchants who accept Visa and/or MasterCard-branded credit cards for payment also to accept Visa and/or MasterCard-branded debit cards for payment, and by conspiring and attempting to monopolize a market for general purpose point of sale debit cards. Plaintiffs claim that Defendants' actions have caused merchants to pay excessive fees on Visa and MasterCard credit and debit transactions, have caused merchants to pay excessive fees on on-line PIN-based debit transactions (which allegedly have been inflated as part of Defendants' alleged conduct), and have injured competition, merchants and consumers. Plaintiffs seek: (1) an injunction prohibiting the Defendants from engaging in the alleged violations of the federal antitrust laws (including the elimination of the alleged forced acceptance of the Visa and/or MasterCard-branded debit cards for payment by merchants who accept Visa and/or MasterCard-branded credit cards for payment), and (2) the recovery of damages for the alleged excess portion of fees paid on Visa and MasterCard credit and debit transactions, and on on-line PIN-based debit transactions, as well as costs and attorneys' fees.



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P. 03/05

4. Defendants have denied Plaintiffs' allegations, and have denied that Defendants in any way violated the antitrust laws. Defendants have asserted defenses to Plaintiffs' claims, including that Defendants' challenged actions were lawful, justified, the result of independent business competition, and that those actions have benefited competition, merchants and consumers. Defendants also have asserted that Plaintiffs have not suffered economic harm from the challenged conduct but, in fact, have benefited. Counsel for MasterCard are located in the New York office of Clifford Chance Rogers & Wells LLP. Counsel for Visa are located in the San Francisco office of Heller Ehrman White & McAuliffe LLP and the New York office of Arnold & Porter.

5. Defendants and Plaintiffs each have filed motions asking the Court to enter summary judgment in their respective favors without a trial, and have opposed each others' motions. The motions are pending before the Court.

6. The Court has not ruled on the merits of Plaintiffs' claims or Defendants' denials of liability or defenses.

### THE CLASS CERTIFICATION RULING

7. On February 22, 2000, the Court entered an order certifying the Action as a class action on behalf of "all persons and business entities who have accepted Visa and/or MasterCard credit cards and therefore have been required to accept Visa Check and/or MasterMoney debit cards" at any time from October 25, 1992 to the present. The Court further ordered that the Class does not include the named Defendants, their directors, officers or members of their families.

8. The certification of the Class does not mean that Plaintiffs have prevailed in this Action or that money necessarily will be obtained for Class members, because there are many contested issues that have not yet been decided. The ruling does mean that any judgment in the case — whether favorable to Plaintiffs or to Defendants — will bind all Class members who do not timely elect to be excluded from the Class as described below.

9. This Notice has been sent to you in the belief that you may be a member of the Class whose rights may be affected by this lawsuit. It should not be understood as an expression of any opinion by the Court concerning the merits of the Action. This Notice is intended merely to advise you of the pendency of the Action and of your rights with respect to it, including the right to exclude yourself from the Class.

### ELECTION BY CLASS MEMBERS TO PARTICIPATE IN, OR TO BE EXCLUDED FROM, THE CLASS

10. You are a member of the Class if you are not one of the Defendants or their directors, officers or members of their families, and if you or your business has accepted Visa and/or MasterCard credit cards for payment at any time since October 25, 1992. If you are a Class member, you have a choice of whether to remain a member of the Class. Your choice will have consequences that you should understand before making your decision. In determining whether you want to remain in or be excluded from the Class, you may want to consult your own attorney.

11. If you want to remain a member of the Class, you are not required to do anything at this time. By remaining a Class member, you will be bound by any judgment in the Action, whether favorable or unfavorable to Plaintiffs. You also agree that any claims against Defendants arising out of the Defendants' conduct at issue in the Action will be determined in the Action and cannot be pursued in any other action. If there is a recovery, you may be entitled to share in the proceeds, less such Plaintiffs' costs, expenses, and attorneys' fees as the Court may allow out of any such recovery. If the Defendants prevail, you may not pursue a lawsuit on your own with regard to any of the Defendants' conduct at issue in the Action.

12. If you remain a member of the Class:

- (A) The Class Representatives, Lead Counsel and Co-Lead Counsel will represent your interests in presenting the claims against Defendants. You will not be personally responsible for Plaintiffs' attorneys' fees or costs, except to the extent that the Court may award such fees and costs to the attorneys which would be paid out of the recovery in this Action, if any. If you desire, you also may appear by your own attorney at your own expense. You also may seek to intervene.
- (B) You will have the right to participate in any recovery that may be obtained from the Defendants in any judgment. If no recovery is obtained, you will be bound by that result, and you will not be permitted to seek any other recovery from Defendants for their conduct at issue in the Action.
- (C) You may be required as a condition of participating in any recovery to present evidence concerning your acceptance of MasterCard and Visa credit and debit transactions. You should, therefore, preserve all records concerning these transactions.

SEP-24-2002 12:00

P.04/05

- (D) You should give notice of any corrections or changes in your address, in writing, in an envelope addressed to the class notice administrator (the "Administrator") appointed by the Court, at The Garden City Group, Inc., P.O. Box 9000-6014, Merrick, New York 11566-9000, Attn: In re Visa Check/MasterMoney Antitrust Litigation, that bears the notation "Address Change; In Re: Visa Check/MasterMoney Antitrust Litigation."

13. If you do not want to remain a member of the Class, you may choose to be excluded from the Class. By electing to be excluded from the Class:

- (A) You will not share in any damages recovery that Defendants might pay as a result of a judgment favorable to Plaintiffs.
- (B) You will not be bound by any judgment favorable to Defendants. However, a decision favorable to Defendants in this Action may still impact your ability to bring a subsequent damages claim against Defendants. For example, you may be bound by a decision favorable to Defendants in this Action to the extent that the Class includes a class as to which no opportunity to opt-out is afforded.
- (C) You will have the right, at your own expense, to pursue any individual claim that you may have against Defendants by filing your own lawsuit or by seeking to intervene in the Action.

14. If you want to be excluded from the Class, you must make a written request for exclusion bearing the title "Request for Exclusion from Class: In Re Visa Check/MasterMoney Antitrust Litigation," and send it by first class mail, postage pre-paid, to The Garden City Group, Inc., P.O. Box 9000-6014, Merrick, New York 11566-9000, Attn: In re Visa Check/MasterMoney Antitrust Litigation. Your request should provide the name, address and telephone number of the person or business entity that wishes to be excluded from the Class, contain your printed name and title (if on behalf of a business entity), and be signed by you. In order for your request to be effective, it must be postmarked on or before November 14, 2002.

#### ADDITIONAL INFORMATION

15. All references in this Notice to pleadings, allegations, claims, defenses and Court orders are summaries. Complete copies of the pleadings, orders and other publicly filed documents in the Action may be examined and copied at any time during regular office hours at the office of the Clerk of the Court, United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201, under the file No. CV-96-5238. You also may access additional information by visiting the website at [www.InReVisaCheck-MasterMoneyAntitrustLitigation.com](http://www.InReVisaCheck-MasterMoneyAntitrustLitigation.com).

16. Any questions you have concerning the matters raised in this Notice, or any corrections or changes of name or address, should not be directed to the Court but should be directed in writing to The Garden City Group, Inc., P.O. Box 9000-6014, Merrick, New York 11566-9000, Attn: In re Visa Check/MasterMoney Antitrust Litigation, or forwarded to the Administrator through the website at [www.InReVisaCheck-MasterMoneyAntitrustLitigation.com](http://www.InReVisaCheck-MasterMoneyAntitrustLitigation.com), or by calling (888) 841-4437.

17. Lead Counsel for Plaintiffs is Constantine & Partners, 477 Madison Avenue, New York, New York 10022 (212) 350-2799; co-lead counsel for Plaintiffs is Hagans Berman LLP, 1301 Fifth Avenue, Seattle, Washington 98101. Any requests for additional information about the case can be submitted to lead counsel or co-lead counsel in writing at either address listed above, in an envelope that bears the legend "Inquiry by Absent Class Member: In Re Visa Check/MasterMoney Antitrust Litigation" or through the e-mail listed on the website at [www.InReVisaCheck-MasterMoneyAntitrustLitigation.com](http://www.InReVisaCheck-MasterMoneyAntitrustLitigation.com). You may, of course, seek the advice and guidance of your own attorney if you desire.

**EXCEPT AS SET FORTH IN THIS NOTICE,  
PLEASE DO NOT CONTACT THE COURT.**

Dated: June 21, 2002

Hon. John H. Gleason  
United States District Judge

# **EXHIBIT E**

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

\_\_\_\_\_  
IN RE VISA CHECK/MASTERMONEY )  
ANTITRUST LITIGATION )  
\_\_\_\_\_)

MASTER FILE NO. CV-96-5238  
(Gleeson, J.) (Mann, M.J.)

**DECLARATION OF STEPHEN T. MIDDLEBROOK**

I, Stephen T. Middlebrook, declare as follows:

1. I am Senior Counsel for the Financial Management Service ("FMS"), a bureau of the United States Department of the Treasury. I have personal knowledge of the matters set forth herein, and if called upon to do so, I could and would competently so testify to those matters.

2. Most Federal agencies which accept credit or debit cards for payment, including Visa and MasterCard branded products, must do so through a program managed by FMS called the Plastic Card Network ("PCN"). The U.S. Postal Service, Army/Air Force Exchange Service, Navy Exchange, the Smithsonian and certain other non-appropriated funds instrumentalities are authorized to obtain credit and debit card acquiring services on their own and thus do not participate in the PCN.

3. In 2004, the PCN processed 48.9 million transactions worth \$4.4 billion on behalf of approximately 60 Federal agencies. Credit card purchases accounted for 20 million of those transactions and were worth \$2.4 billion. Debit card transaction volume was 28.9 million and totaled \$2 billion.

4. In the Fall of 2002, I received copies of the "Notice of Pendency of Class Action" in the Visa Check/MasterMoney antitrust litigation which had been forwarded to me by a number of Federal agencies that participate in the PCN.

5. After receiving the notices, I spoke on several occasions with Lloyd Constantine and other individuals in his firm ("Class Counsel") regarding the lawsuit. Class Counsel explained their theory of the case to me and sent me copies of certain pleadings. I provided Class Counsel with information about PCN credit and debit card transaction volumes so that they could estimate the amount of damages owed to the PCN.

6. On November 7, 2002, I met with Mr. Constantine in my office in Washington, D.C. Mr. Constantine explained Plaintiffs' theory of the case in detail and outlined their calculation of damages. We discussed possible scenarios under which the United States could

recover its share of damages. At one point I asked Mr. Constantine whether he thought the card associations would oppose the United States' participation in the class action. He stated that he thought they would not oppose our filing claims because any award of damages would be based on system-wide transaction volumes and thus payment for the United States' share would be included in that award regardless of whether we filed a claim for it.

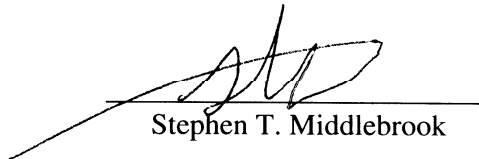
7. In 2003, I spoke on several occasions with representatives of Class Counsel regarding the share of damages which would be earmarked for the United States. In one conversation after announcement of the settlement of the litigation, a representative of Class Counsel informed me that their economist estimated the United States' share of the settlement funds to be between \$70-100 million.

8. In the Fall of 2005, I received copies of the "Notice of Estimated Cash Payment and Claim Form" which had been forwarded to me by a number of Federal agencies. Some of these notices included an estimated dollar amount that the Federal agency was entitled to receive.

9. After consulting with the Department of Justice, Antitrust Division ("DOJ"), FMS informed participants in the PCN that they should not respond individually to the notices they received and that DOJ would instead file a consolidated claim on their behalf. FMS gathered claims information for all PCN participants and DOJ filed a consolidated claim on behalf of the PCN.

10. Any recovery made by the United States on behalf of the PCN will be deposited into the Treasury General Account as a miscellaneous receipt.

21<sup>st</sup> I declare under penalty of perjury that the foregoing is true and correct. Executed this day of March, 2006 in Washington, D.C.

  
Stephen T. Middlebrook

# **EXHIBIT F**



U.S. Department of Justice

Civil Division

MFH: PDammann

P.O. Box 261, Ben Franklin Station  
Washington, D.C. 20044  
Tel: (202) 307-1183

NOV 14 2002

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New York, NY 10022

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McDermott, Will & Emery  
50 Rockefeller Plaza  
New York, NY 10020

Jerald A. Jacobs, Esq.  
Jenner & Block  
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Washington, DC 20005

Mallory B. Duncan, Esq.  
General Counsel  
National Retail Federation  
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Washington, DC 20004

James F. Rill, Esq.  
Collier, Shannon, Rill & Scott  
3050 K Street, N.W.  
Washington, DC 20007

George R. Green, Esq.  
Vice President & General Counsel  
Food Marketing Institute  
800 Connecticut Avenue, N.W.  
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& Bernstein  
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Hillary Sobel, Esq.  
Zwerling, Schachter & Zwerling, LLP  
767 Third Avenue  
New York, NY 10017-2023

*In Re: Visa Check/MasterMoney Antitrust Litigation, CV-96-5238 (E.D.N.Y.)*

Dear Counsel:

This letter is to advise you that the Civil Division has concluded that the United States (including any agency or instrumentality of the United States) is not a member of the class represented by the plaintiffs in the above-referenced consolidated class action cases. Consequently, to the extent that the United States has a cause of action with respect to the conduct alleged in the above-referenced litigation, the rights of the United States are **not** affected in any way by any settlement by the private parties in these cases.

This conclusion is based upon a review of various pleadings and papers filed in this litigation, as well as the relevant statutes and case law relating to antitrust violations. *See, e.g.*, 15 U.S.C. §§ 15 and 15a; *United States v. Cooper, Corp.*, 312 U.S. 600 (1941); *Sea-Land Service, Inc. v. Alaska Railroad*, 659 F.2d 243, 245-6 (D.C.Cir. 1981), *cert. denied*, 455 U.S. 919

(1982); *Rex Systems, Inc. v. Holiday*, 814 F.2d 994, 997 (4th Cir. 1987).

Moreover, even assuming *arguendo* that the above-referenced statutes and case law do not bar participation of the United States in this class action litigation and that the United States has been properly served, 28 U.S.C. §§ 516 and 519 prohibit the United States from being treated as a passive class member, regardless of whether the United States Attorney General formally opts out of a class action case. Section 516 provides generally that only the United States Attorney General and his officers may represent the interests of the United States in litigation involving the government. Thus, a class represented by private counsel could not, as a matter of law, include the United States or its agencies as class members, since private counsel is not authorized to represent the interests of the United States and could not bind the United States.

The United States Attorney General therefore does not agree to the federal government's being included as a class member in this Rule 23 litigation. The position taken in this letter should not be construed as, and does not represent, a waiver of any claims which the United States may have against any defendant named in the litigation.

If you have any questions, please feel free to contact me at (202) 307-1183.

Sincerely,



POLLY A. DAMMANN

Assistant Director  
Civil Fraud Section  
Commercial Litigation Branch  
Civil Division

cc: Chris Kohn  
Director  
Civil Division

James R. Wade  
Chief, Litigation III  
Antitrust Division

# **EXHIBIT G**

MARY ANNE GIBBONS  
VICE PRESIDENT, GENERAL COUNSEL



November 14, 2002



VIA EXPRESS MAIL

The Garden City Group, Inc.  
P.O. Box 9000-6014  
Merrick, New York 11566-9000  
Attn.: In re Visa Check/MasterMoney Antitrust Litigation

Re: Class Action—In re Visa Check/MasterMoney Antitrust Litigation

Dear Sir or Madam:

The United States Postal Service will be included in any determination made by the United States Government. To the extent that the United States Government takes no action, the United States Postal Service states that it should be excluded from the class.

Sincerely,

Mary Anne Gibbons

cc James Wade, Esq (USDOJ)

US Postal Service 2690

# **EXHIBIT H**

**In Re Visa Check/MasterMoney Antitrust Litigation**

**Must be Postmarked  
No Later Than  
November 28, 2005**

**Claims Administrator  
P.O. Box 9000 #6014  
Merrick, NY 11566-9000**

**Toll-free number: 1-888-641-4437**

**Website: [www.inrevisacheckmastermoneyantitrustlitigation.com](http://www.inrevisacheckmastermoneyantitrustlitigation.com)**

**E-mail: [admin@inrevisacheckmastermoneyantitrustlitigation.com](mailto:admin@inrevisacheckmastermoneyantitrustlitigation.com)**

**VM1**



**LEAD COUNSEL FOR THE CLASS -- CONSTANTINE CANNON**

**Para notificación y formularios en español, llamar al 1-888-641-4437 o visitar nuestra pagina  
web: [www.inrevisacheckmastermoneyantitrustlitigation.com](http://www.inrevisacheckmastermoneyantitrustlitigation.com)**

**Claim Number: 13696170**

**Control Number: 3027825478**



**NAVY EXCHANGE 050180  
NAVAL AIR STATION OCEANA  
VIRGINIA BCH, VA 23460**



**NOTICE OF ESTIMATED CASH PAYMENT AND CLAIM FORM**

You or your company have been identified as a member of the Class in the **Visa Check/MasterMoney Antitrust Litigation**. As a Class Member you are entitled to receive a Cash Payment which is estimated to be:

**\$48,865**

To claim a Cash Payment you must complete this Claim Form. If after reading this Form, and the more detailed set of Instructions enclosed, you still do not understand how to complete this Form, you can get help by calling, writing, or e-mailing the Claims Administrator, The Garden City Group, Inc., at the above toll-free number, P.O. Box or e-mail address.

All you need to do is fill out this Claim Form and file it by regular mail postmarked no later than November 28, 2005 or electronically file on the website. Either way you must file your Claim Form by November 28, 2005.

If you just want to learn more about this litigation, please log on to the Claims Distribution website at: [www.inrevisacheckmastermoneyantitrustlitigation.com](http://www.inrevisacheckmastermoneyantitrustlitigation.com) or you can leave a message for Constantine Cannon, Lead Counsel for the Class, by calling toll-free: 1-888-641-4437.

**If, after reading this Form and the accompanying instructions in their entirety, you DISAGREE with the Estimated Cash Payment listed above and wish to challenge it, please check the appropriate box in section B of this Form.**



### WHY YOU ARE ENTITLED TO A CASH PAYMENT

This Section briefly explains why we believe that you are entitled to a Cash Payment and why, in order to receive this payment, you must supply the information requested on this Claim Form. More detailed explanations can be found in the enclosed Instructions, as well as on the Claims Distribution website.

The **Visa Check/MasterMoney Antitrust Litigation** is a lawsuit that was filed and litigated in the United States District Court for the Eastern District of New York in Brooklyn. You or your Business or Organization is a member of the Class of plaintiffs who filed, litigated and obtained a settlement in this case. This Class includes all businesses and organizations in the United States that accepted Visa and MasterCard credit cards at any time during the period October 25, 1992 to June 21, 2003. The Class Members claimed that, through their "Honor All Cards" policies, Visa and MasterCard forced them to accept Visa and MasterCard signature debit card transactions. Visa and MasterCard's signature debit products are sometimes called **Visa Check**, **MasterMoney** or **Debit MasterCard**. The merchants also claimed that Visa and MasterCard were attempting to monopolize the debit card business in the United States.

In April 2003, just as the trial was about to begin, Visa and MasterCard settled with the plaintiffs' Class. Visa and MasterCard agreed to eliminate their "Honor All Cards" policies which required merchants that accepted their credit cards to also accept their signature debit card transactions, and prior to this untying of credit and debit they agreed to lower debit card fees for an interim period by one-third. They also agreed to re-label the **Visa Check** and **MasterMoney** debit cards with the word "Debit" on the front and agreed to do other things related to the separation and untying of debit cards from credit cards. In addition to that, Visa and MasterCard agreed to provide compensation to merchants which includes Cash Payments by Visa and MasterCard totaling \$3.05 billion. This money will be distributed to you and the other Class Members after the attorneys fees, expenses and cost of notice and administration approved by the Court have been deducted.

The Court approved a plan for allocating and distributing this money to you and other Class Members. It is based on the dollar amount of Visa and MasterCard debit card and credit card transactions your Business, Organization or Corporation accepted from October 25, 1992 to July 31, 2003. Also, if you accepted debit card transactions with a PIN Pad during this same time period, an additional Cash Payment *above and beyond* the Estimated Cash Payment on Page 1 will also be paid to you. However, to receive this additional payment, you must provide the information requested in Section C below, including when you began and completed the installation of PIN Pads.

We know that it may be difficult or impossible for you to provide many details of your acceptance of debit card and credit card transactions for this long period of time beginning way back in October 1992. For that reason, we have calculated your Estimated Cash Payment, using databases which we were allowed to use for these purposes. And, for that reason, we are not requiring you to provide any documentation along with your Claim Form to prove your entitlement to a Cash Payment. Please be advised, however, that while you are not required to submit any documentation with your Claim Form, we may ask certain merchants to produce documentation to prove their entitlement to a Cash Payment. We therefore advise you to maintain documentation, such as your merchant contracts, which show when you accepted Visa and/or MasterCard payment cards, and if applicable, the transactions of any PIN debit network.

The questions which you must answer below will provide the additional information we need to send you the Cash Payment you are entitled to. In addition to basic questions about your Business or Organization, its address, telephone number, and e-mail address, among other things, the questions are designed to get you the most accurate Cash Payment from the billions of dollars to be distributed to Class Members.

# **EXHIBIT I**



**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

\_\_\_\_\_  
IN RE VISA CHECK/MASTERMONEY )  
\_\_\_\_\_)  
ANTITRUST LITIGATION )  
\_\_\_\_\_)

MASTER FILE NO. CV-96-5238  
(Gleeson, J.) (Mann, M.J.)

**DECLARATION OF MELANIE FIX**

I, Melanie Fix, declare as follows:

1. I am Assistant Counsel for the Navy Exchange Service Command ("NEXCOM"), a position I have held since February, 2003. I have personal knowledge of the matters set forth herein, and if called upon to do so, I could and would competently so testify as to those matters. NEXCOM is a non-appropriated fund instrumentality under the Department of Navy, United States of America. As such, the Command is self-supporting and all profits are reinvested in Morale, Welfare, and Recreation ("MWR") programs and in Navy Exchange buildings and equipment.
2. NEXCOM has over 109 retail exchange complexes worldwide comprised of over 430 selling locations. Within the Navy Exchange System are five primary business units – Navy Exchange retail stores and services, Navy Lodges, the Navy Uniform Program, the Ship Store Program, and Telecommunications. All programs focus on the Sailor and the necessity of a good quality of life benefit to customers – including active duty, family members, retirees, national guard, and reservists – around the world, both ashore and at sea.
3. Seventy percent of the profits generated within the Exchange System are given back to Sailors in the form of MWR distributions. The remaining thirty percent is retained by the Navy Exchange System and funds new stores, renovations, and other major improvement projects.
4. NEXCOM received copies of the Notice of Settlement of Class Action in this case in July 2003.
5. In September 2005, NEXCOM's retail stores and concessionaires began receiving Notices of Estimated Cash Payment and Claim Forms (VM1 forms) and In Re VISA Check/MasterMoney Claim Forms (VM2 forms), which were forwarded to me at the Office of Counsel. The VM1 forms state: "You or your company have been identified as a member of the Class in Visa Check/MasterMoney Antitrust Litigation. As a Class Member you are entitled to receive a Cash Payment which is estimated to be: \$ [x]." The VM2 forms include a claim form to be completed with sales data and submitted to the Claims Administrator.
6. To date, our retail stores have received 81 VM1 forms and 68 VM2 forms. The VM1 forms indicate that NEXCOM's aggregate estimated cash payment is \$726,841. However, the

VM1 forms only account for 14.6 % of the Merchant ID numbers associated with NEXCOM retail outlets.

7. NEXCOM is a member of the National Retail Federation ("NRF"). On November 29, 2005, I contacted a representative of NRF, who I understood to be knowledgeable about the Class Action, for information about the Class Action deadlines and how government entities would be submitting their claims.

8. At NRF's suggestion, I contacted both the Claims Administrator Hot Line and the Consolidation Consultant for the Claims Administrator, Mike McCormack, for more information.

9. I spoke to the Claims Administrator Hot Line on at least two occasions in the November-December 2005 time frame, and twice I was told that the federal government is part of the Class for the purposes of the settlement.

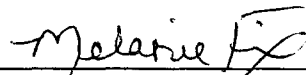
10. I spoke to Mr. McCormack numerous times throughout the information gathering process, and he always provided invaluable help and guidance.

11. On November 29, 2005, Mr. McCormack and I spoke about the fact that the Department of Justice was raising an issue about the payment of government claims. He told me Lead Counsel was aware of the issue, and assured me that the money earmarked for the federal governmental entities would not be distributed to other class members.

12. On December 22, 2005, Mr. McCormack told me that the amounts reflected in the VM1 forms received by NEXCOM were estimates of the amount apportioned to NEXCOM based on sales figures that the Claims Administrator obtained from the processing banks that it was able to identify to NEXCOM stores. However, he assured me that when NEXCOM submitted its consolidation spreadsheet, new estimates would be run based on all NEXCOM merchant ID numbers.

13. On January 10, 2006, NEXCOM submitted a consolidated claim spreadsheet to Department of Justice to be submitted to the Claims Administrator. The spreadsheet contained information on 553 Merchant ID numbers associated with NEXCOM. I understand that NEXCOM's consolidated claim was forwarded by the Department of Justice to Lead Counsel on January 27, 2006, which was within the extension granted by Lead Counsel for the submission of claims by the United States.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 17<sup>th</sup> day of March, 2006 in Virginia Beach, Virginia.

  
Melanie Fix

# **EXHIBIT J**

## United States District Court

FOR THE

EASTERN DISTRICT OF NEW YORK

CIVIL ACTION FILE NO. \_\_\_\_\_

STATE OF NEW YORK

Plaintiff

v.

SALEM SANITARY CARTING CORP.,  
et. al.

Defendants

SUMMONS

To the above named Defendant s:

You are hereby summoned and required to serve upon Robert Abrams, Attorney General  
of the State of New York.

plaintiff's attorney , whose address Antitrust Bureau, Room 4579, Two World Trade  
Center, New York, New York 10047

an answer to the complaint which is herewith served upon you, within 20 days after service of this  
summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be  
taken against you for the relief demanded in the complaint.

ROBERT C. HEINEMANN

*Debra F. K...*  
Clerk of Court.  
Deputy Clerk.

Date: Jan. 22, 1955

[Seal of Court]

\* See attached rider for complete list of defendants.

NOTE:—This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

LIST OF ALL DEFENDANTS

CV 85-0208

SALEM SANITARY CARTING CORP.  
3M CARTING INC.  
A-1 CARTING CORP.  
ACE GARBAGE & RUBBISH REMOVAL, INC.  
CAVALIER CARTING CORP.  
DETAIL CARTING CO., INC.  
DONNO CO. INC.  
ENVIRO CARTING INC. d/b/a ISLAND CARTING CO.  
FIVE COUNTIES CARTING CORP.  
FULL SERVICE TRUCKING, INC.  
GRAND CARTING, INC.  
HARBOR CARTING CORP.  
JAMAICA ASH & RUBBISH REMOVAL CORP. INC.  
MAGGIO's M & P CARTING SERVICE, INC.  
MCM SANITATION INC. d/b/a ISLAND CARTING CO.  
SAIL CARTING & RECYCLING CORP.  
SAIL SANITATION INC.  
SANICARE, INC.  
S.P.F. CARTING  
STANDARD COMMERCIAL CARTAGE, INC.  
UNIQUE SANITATION CO. INC.  
VINNIE MONTE WASTE SYSTEMS, INC.  
WAYSIDE CARTING INC.  
PRIVATE SANITATION INDUSTRY ASSOCIATION OF  
NASSAU/SUFFOLK, INC.  
SALVATORE AVELLINO, JR.  
CHARLES CANNIZZARO  
FRANK CARIONE  
RANIERO COLATOSTI  
ANTONIO CORALLO  
JAMES J. CORRIGAN, JR.  
EDWARD DE MATTEO  
ERNEST DE MATTEO  
EMEDIO FAZZINI  
SIDNEY P. FENSTER  
NICHOLAS FERRANTE  
THOMAS GALLAGHER  
VIRGIL L. GUERRIERO  
JOHN HAYNES  
VINCENT A. MAGGIO  
ANTHONY MIELLO  
VINCENT MONTESANO  
JOSEPH PETRIZZO  
JOSEPH PEZZA  
PASQUALE PEZZA  
THOMAS RONGA  
FRANK ROTUNDO  
SALVATORE SANTORO  
ROBERT SCHUMAN,  
ANTHONY VESPUCCI,

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
STATE OF NEW YORK,

Plaintiff,

-against-

SALEM SANITARY CARTING CORP.  
3M CARTING INC.  
A-1 CARTING CORP.  
ACE GARBAGE & RUBBISH REMOVAL, INC.  
CAVALIER CARTING CORP.  
DETAIL CARTING CO., INC.  
DONNO CO. INC.  
ENVIRO CARTING INC. d/b/a ISLAND CARTING CO.  
FIVE COUNTIES CARTING CORP.  
FULL SERVICE TRUCKING, INC.  
GRAND CARTING, INC.  
HARBOR CARTING CORP.  
JAMAICA ASH & RUBBISH REMOVAL CORP. INC.  
MAGGIO's M & P CARTING SERVICE, INC.  
MCM SANITATION INC. d/b/a ISLAND CARTING CO.  
SAIL CARTING & RECYCLING CORP.  
SAIL SANITATION INC.  
SANICARE, INC.  
S.P.F. CARTING  
STANDARD COMMERCIAL CARTAGE, INC.  
UNIQUE SANITATION CO. INC.  
VINNIE MONTE WASTE SYSTEMS, INC.  
WAYSIDE CARTING INC.  
PRIVATE SANITATION INDUSTRY ASSOCIATION OF  
NASSAU/SUFFOLK, INC.  
SALVATORE AVELLINO, JR.  
CHARLES CANNIZZARO  
FRANK CARIONE  
RANIERO COLATOSTI  
ANTONIO CORALLO  
JAMES J. CORRIGAN, JR.  
EDWARD DE MATTEO  
ERNEST DE MATTEO  
EMEDIO FAZZINI  
SIDNEY P. FENSTER  
NICHOLAS FERRANTE  
THOMAS GALLAGHER  
VIRGIL L. GUERRIERO  
JOHN HAYNES  
VINCENT A. MAGGIO  
ANTHONY MIELLO  
VINCENT MONTESANO  
JOSEPH PETRIZZO  
JOSEPH PEZZA  
PASQUALE PEZZA  
THOMAS RONGA  
FRANK ROTUNDO  
SALVATORE SANTORO  
ROBERT SCHUMAN  
ANTHONY VESPUCCI,

Defendants.

COMPLAINT  
84 Civ.

CLASS ACTION  
JURY DEMAND

-----X

This action, arising under the antitrust laws of the United States, is brought by the State of New York, through its Attorney General Robert Abrams.

PRELIMINARY STATEMENT

Defendants conspired to, and did, allocate governmental, commercial and residential customers of garbage collection services among themselves and their co-conspirators, through a system of property rights in customers, maintained by economic and physical coercion. This violation of the antitrust laws of the United States occurred in Nassau and Suffolk Counties of New York State. Plaintiff is seeking injunctive relief and monetary relief of threefold the damages sustained as a result of the defendant's illegal actions.

I

JURISDICTION AND VENUE

1. This complaint is filed and the jurisdiction of the court is invoked under the provisions of 28 U.S.C. § 1337 and 15 U.S.C. §§ 15, 15c, and 26 to recover monetary relief for injuries sustained and for injunctive relief against continuing violations by the defendants of Section 1 of the Sherman Act, 15 U.S.C. § 1.

2. Each of the defendants transacts business, resides or is found within the Eastern District of New York, and the claim arose in the Eastern District of New York.

## II

### DEFINITIONS

#### 3. As used herein

(a) "garbage collection" means the service of collecting, hauling and disposing of trash, rubbish, garbage and other solid wastes.

(b) "garbage collector" means any person, partnership, corporation or other business entity engaged in private garbage collection excluding public employees and governmental agencies.

(c) "customers" means all purchasers of private garbage collection services.

(d) "governmental entity" means the State of New York and all counties, cities, political subdivisions, public authorities, public schools, public school districts, public hospitals and all other public entities within New York State except entities and institutions of the United States government.

(e) "plaintiff" means the State of New York, the purported class and the parens patriae group.

## III

### PLAINTIFF

4. The State of New York, by its Attorney General, Robert Abrams, brings this action on its own behalf, on behalf of the purported class hereinafter described, and as parens patriae on behalf of all natural persons residing in New York State who have purchased garbage collection services in Nassau and Suffolk



Counties of New York State from the defendants or their co-conspirators, during the period of the conspiracy alleged herein. The State of New York, the purported class and the parens patriae group have sustained damage as a result of violations of Section 1 of the Sherman Act, 15 U.S.C. § 1, by defendants and their co-conspirators.

#### IV

##### CLASS ACTION ALLEGATIONS

5. Plaintiff brings this action pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure, on behalf of itself and all members of a class comprised of all governmental entities within the Counties of Nassau and Suffolk of the State of New York, i.e., these counties, cities, towns, political subdivisions, public authorities, public schools, school districts, public hospitals, and all other public entities within these Counties, except entities and institutions of the United States government, that have purchased garbage collection services from the defendants or their co-conspirators during the period of the conspiracy alleged herein.

6. Plaintiff is a member of the class; its claims are typical of the claims of all class members; and it will fairly and adequately protect the interests of the class.

7. The class is so numerous that joinder of all members is impracticable. It consists of hundreds of governmental entities in Nassau and Suffolk Counties which purchase garbage collection services.

8. Questions of law and fact common to the members of the class predominate over any questions affecting individual members. The common questions of fact and law include the existence of the combination and conspiracy herein alleged, the extent to which members of the class were injured by the violations alleged, and the liability of defendants for the injury suffered by members of the class.

9. The claims of plaintiff and other class members are identical, and the defenses will be identical with respect to each class member.

10. A class action is superior to any alternative method for the fair and efficient adjudication of this controversy.

V

DEFENDANTS

11. Defendant 3M CARTING, INC. ("3M") is a New York corporation engaged in the business of garbage collection, with its principal place of business at 311 Winding Road, Old Bethpage, New York.

12. Defendant A-1 CARTING CORP. ("A-1") is a New York corporation engaged in the business of garbage collection, with its principal place of business at 10A Morris Avenue, Glen Cove, New York.

13. Defendant ACE GARBAGE & RUBBISH REMOVAL, INC. ("Ace") is a New York corporation engaged in the business of garbage collection, with its principal place of business at 311 Winding Road, Old Bethpage, New York.

14. Defendant CAVALIER CARTING CORP. ("Cavalier") is a New York corporation engaged in the business of garbage collection, with its principal place of business at 109 Village Hill Drive, Dix Hills, New York.

15. Defendant DETAIL CARTING CO., INC. ("Detail") is a New York corporation engaged in the business of garbage collection, with its principal place of business at 1770 Feuerisen Avenue, Ronkonkoma, New York.

16. Defendant DONNO Co., INC. ("Donno") is a New York corporation engaged in the business of garbage collection, with its principal place of business at 300 East Shore Road, Great Neck, New York.

17. Defendant ENVIRO CARTING INC., d/b/a Island Carting ("Enviro") is a New York corporation engaged in the business of garbage collection, with its principal place of business at 43 East Carl St., Hicksville, New York.

18. Defendant FIVE COUNTIES CARTING CORP., ("Five Counties") is a New York corporation engaged in the business of garbage collection, with its principal place of business at 172-33 Douglas Ave. Jamaica, New York.

19. Defendant FULL SERVICE TRUCKING, INC. ("Full Service") is a New York Corporation engaged in the business of garbage collection, with its principal place of business at P.O. Box 362, Mt. Sinai, New York.

20. Defendant GRAND CARTING, INC. ("Grand") is a New York corporation engaged in the business of garbage collection, with

its principal place of business at 98 Kean Street, West Babylon, New York.

21. Defendant HARBOR CARTING CORP. ("Harbor") is a New York corporation engaged in the business of garbage collection, with its principal place of business at 110 Hayrich Lane, Commack, New York.

22. Defendant JAMAICA ASH & RUBBISH REMOVAL CORP. INC. ("Jamaica Ash") is a New York corporation engaged in the business of garbage collection, with its principal place of business at 633 Dickens Street, Westbury, New York.

23. Defendant MAGGIO's M & P CARTING SERVICE, INC. ("Maggio's") is a New York corporation engaged in the business of garbage collection, with its principal place of business at 26 Chestnut Street, Mt. Sinai, New York.

24. Defendant MCM SANITATION, INC. d/b/a ISLAND CARTING CO. ("Island") is a New York corporation engaged in the business of garbage collection, with its principal place of business at 719 Meadow Road, Smithtown, New York.

25. Defendant SAIL CARTING & RECYCLING CORP. ("Sail Carting") is a New York corporation engaged in the business of garbage collection, with its principal place of business at 150 Townline Rd., Kings Park, New York.

26. Defendant SAIL SANITATION INC. ("Sail Sanitation") was a New York corporation engaged in the business of garbage collection during the period of the conspiracy, with its principal place of business at 150 Townline Rd., Kings Park, New

York. Sail Sanitation is not currently engaged in the business of garbage collection.

27. Defendant SANICARE, INC. ("Sanicare") was a New York corporation engaged in the business of garbage collection during the period of the conspiracy, with its principal place of business at 150 Townline Rd., Kings Park, New York. Sanicare is not currently engaged in the business of garbage collection.

28. Defendant SALEM SANITARY CARTING CORP. ("Salem") is a New York corporation with its principal place of business at 1599 Ocean Avenue, Bohemia, New York.

29. Defendant S.P.F. CARTING ("S.P.F.") is a New York corporation engaged in the business of garbage collection, with its principal place of business at 6 Fulton Street, West Babylon, New York.

30. Defendant STANDARD COMMERCIAL CARTAGE, INC. ("Standard") is a New York corporation engaged in the business of garbage collection, with its principal place of business at 263 Washington Avenue, St. James, New York.

31. Defendant UNIQUE SANITATION CO., INC. ("Unique") is a New York corporation engaged in the business of garbage collection, with its principal place of business at 50 Eads Street, West Babylon, New York.

32. Defendant VINNIE MONTE WASTE SYSTEMS, INC. ("Monte") is a New York corporation engaged in the business of garbage collection, with its principal place of business at 1510 5th Industrial Court, Bay Shore, New York.

33. Defendant WAYSIDE CARTING INC. ("Wayside") is a New York corporation engaged in the business of garbage collection, with a mailing address of Box 733, Kings Park, New York.

34. Defendant PRIVATE SANITATION INDUSTRY ASSOCIATION OF NASSAU/SUFFOLK, INC. ("PSI") is a New York corporation with its principal place of business at 110 Huntington Quadrangle, Huntington, New York. PSI is a trade association with a membership of approximately 120 garbage collectors.

35. Defendant SALVATORE AVELLINO, JR. is Chief Executive of Salem. Avellino resides in Nissequogue, New York and has a business address at Salem's offices located at 1599 Ocean Avenue, Bohemia, New York.

36. Defendant CHARLES CANNIZZARO is Vice President of Island. Cannizzaro resides in Deer Park, New York and has a business address at Island's offices located at 719 Meadow Road, Smithtown, New York.

37. Defendant FRANK CARIONE is a managerial agent of Grand Carting. He resides in St. James, New York and has a business address at Rite-Way Sanitation Corp., 80 Comsewogue Rd., East Setauket, New York.

38. Defendant RANIERO COLATOSTI is President of Harbor. Colatosti resides in Commack, New York and has a business address at Harbor's offices located at 110 Hayrich Lane, Commack, New York.

39. Defendant ANTONIO CORALLO is an associate of defendants Avellino and Santoro and regularly discussed with them the

garbage industry in Nassau and Suffolk Counties. Defendant Corallo resides in Oyster Bay, New York.

40. Defendant JAMES J. CORRIGAN, JR. is Executive Director of PSI. Corrigan resides in Southampton, New York and has a business address at PSI's business offices at 110 Huntington Quadrangle, Huntington, New York.

41. Defendant EDWARD DE MATTEO is a managerial agent of Sail Carting and Recycling Corp. DeMatteo resides in Dix Hills, New York and has a business address at Sail Carting's offices located at 150 Townline Rd., Kings Park, New York.

42. Defendant ERNEST DEMATTEO is Secretary-Treasurer of Sail Carting and Recycling Corp. DeMatteo resides in Dix Hills, New York and has a business address at Sail Carting's offices located at 150 Townline Rd., Kings Park, New York.

43. Defendant EMEDIO FAZZINI is President of Jamaica Ash. Fazzini resides in Westbury, New York and has a business address at Jamaica Ash's offices located at 633 Dickens Street, Westbury, New York.

44. Defendant SIDNEY P. FENSTER is President of SPF. Fenster resides in Great Neck, New York and has a business address at SPF's offices located at 6 Fulton Street, Babylon, New York.

45. Defendant NICHOLAS FERRANTE is President of Unique. Ferrante resides in Syosset, New York and has a business address at Unique's offices located at 50 Eads Street, West Babylon, New York.

46. Defendant THOMAS F. GALLAGHER is Secretary-Treasurer of Full Service Trucking. Gallagher resides in Stony Brook, New York and has a business address at Full Service's offices located at P.O. Box 362, Mt. Sinai, New York.

47. Defendant VIRGIL L. GUERRIERO is President of Cavalier. Guerriero resides in Dix Hills, New York and has a business address at Cavalier's offices located at 109 Village Hill Drive, Dix Hills, New York.

48. Defendant JOHN HAYNES is President of Standard. Haynes resides in St. James, New York and has a business address at Standard's offices located at 263 Washington Avenue, St. James, New York.

49. Defendant VINCENT A. MAGGIO is an officer of Maggio's. Maggio resides in Miller Place, New York and has a business address at Maggio's offices located at Chestnut Street, Mt. Sinai, New York.

50. Defendant ANTHONY MIELLO is President of Island. Miello resides in Smithtown, New York and has a business address at Island's offices located at 719 Meadow Road, Smithtown, New York.

51. Defendant VINCENT MONTESANO is President of Monte. Montesano resides in Dix Hills, New York and has a business address at Monte's offices located at 1510 5th Industrial Court, Bay Shore, New York.

52. Defendant JOSEPH PETRIZZO is an officer of Ace and of 3M. Petrizzo resides in Massapequa, New York and has a business



office at Ace and 3M's offices located at 311 Winding Rd., Old Bethage, New York.

53. Defendant JOSEPH PEZZA is Secretary-Treasurer of A-1. Pezza resides in Old Brookville, New York and has a business address at A-1's offices located at 10A Morris Avenue, Glen Cove, New York.

54. Defendant PASQUALE PEZZA is President of A-1. Pezza resides in Huntington, New York and has a business address at A-1's offices located at 10A Morris Avenue, Glen Cove, New York.

55. Defendant THOMAS RONGA is President of Detail. Ronga resides in Dix Hills, New York and has a business address at Detail's offices located at 1770 Feuerisen Avenue, Ronkonkoma, New York.

56. Defendant FRANK ROTUNDO is President of Wayside, Rotundo resides in Northport, New York and has a business mailing address at Wayside's mailing address of Box 773, Kings Park, New York.

57. Defendant SALVATORE SANTORO is an associate of defendants Avellino and Corallo and regularly discussed with them the garbage business in Nassau and Suffolk Counties. Defendant Santoro resides in City Island, New York.

58. Defendant ROBERT SCHUMAN is a managerial agent for Standard. Schuman resides in St. James, New York and has a business address at Standard's offices located at 263 Washington Avenue, St. James, New York.

59. Defendant ANTHONY VESPUCCI is Vice President of Sail Carting and Recycling Corp., Inc. and President of Sail Sanitation and Sanicare. Vespucci resides in Fort Salonga, New York.

VI

CO-CONSPIRATORS

60. Various corporations, partnerships, business entities and individuals not named as defendants have participated as co-conspirators in the violations of federal law alleged and have performed acts and made statements in furtherance thereof.

VII

TRADE AND COMMERCE AFFECTED

61. During the period covered by this complaint, the defendant corporations and co-conspirators were the major providers of garbage collection services in Nassau and Suffolk Counties. Their customers included, among others, corporations engaged in interstate commerce, federal, state and county facilities, and local school districts. In 1982, total revenues from garbage collection services provided by the defendant corporations and co-conspirators in Nassau and Suffolk Counties for publicly bid contracts alone were in excess of \$23 million.

62. During the period covered by this complaint defendant garbage collectors and co-conspirators substantially affected interstate commerce by, among other things, doing the following:

(a) Purchasing substantial quantities of equipment manufactured outside the State of New York including, among other

things, containers and trucks for use in the provision of garbage collection services in Nassau and Suffolk Counties;

(b) Purchasing substantial quantities of petroleum products produced outside New York;

(c) Regularly using various channels of interstate communication, including telephone lines and the mails to effect purchases and financing;

(d) Obtaining substantial loans from entities engaged in interstate commerce located both in and outside New York to finance purchases and various other aspects of their operations;

(e) Expending substantial amounts for the purchase of performance bonds and other types of bonds from entities engaged in interstate commerce located both in and outside New York in connection with the submission of bids to governmental entities;

(f) Providing garbage collection services to corporations engaged in interstate commerce;

(g) Providing garbage collection services to customers in Nassau and Suffolk Counties whose garbage was generated as a consequence of activity of a substantial dollar amount within the flow of interstate commerce.

63. The customer and territorial allocation agreement challenged herein has had, and may be expected to continue to have, a substantial effect on interstate commerce, in the following ways, among others:

(a) The elimination of actual competition restricts output of services, increases prices and eliminates potential competition; and

(b) A restriction of output or an increase in price or elimination of potential competition adversely and substantially affects the sales and output of all direct and indirect commercial purchasers of garbage collection services and the sales and output of all persons supplying goods and services to the direct and indirect purchasers of garbage collection services.

#### VIII

##### FACTS

64. Defendants and their co-conspirators agreed to, and organized and enforced a customer allocation scheme in Nassau and Suffolk Counties, pursuant to which they divided among themselves the residential, commercial and governmental customers of garbage collection services, and took retaliatory actions against garbage collectors who "rebel", i.e., do not adhere to the terms of the conspiracy.

65. The defendants' customer allocation agreement is enforced by a system of operating rules accepted and understood by the conspirators. These rules restrain and govern competition among garbage collectors in Nassau and Suffolk Counties.

66. Pursuant to the customer allocation agreement, customers must remain with the garbage collector servicing them. Each garbage collector has "property rights" to his customers. Garbage collectors refrain from soliciting each other's customers, and refuse to serve customers previously served by another garbage collector. If a customer seeks to contract with

a different garbage collector, he will be refused or quoted unreasonably high prices.

67. Garbage collectors regularly communicate with each other and divulge information about their businesses and business problems. Defendants buy and sell collection routes and particular customers including governmental entities at varying rates; these routes and customers are then considered the property of the buyer. The rate at which the routes and customers are sold is sometimes as high as forty-five times the monthly income earned by the garbage collector. Pursuant to the customer allocation agreement, if a garbage collector takes a customer from another garbage collector, he must compensate the previous garbage collector either by giving the previous carter a customer generating equal income, or by a cash payment.

68. The allocation scheme includes established methods of settling disputes among garbage collectors and enforcing the rules. In cases where garbage collectors cannot reach agreements regarding compensation, or a garbage collector refuses to provide compensation, one or more third party garbage collectors with authority to resolve disputes will intervene. If a garbage collector continues to refuse to provide compensation for lost customers, his customers are solicited by one or more garbage collectors offering service at lower prices. The recalcitrant garbage collector is then forced to offer even lower prices in order to keep his customers. When his price structure is thus weakened he is compelled to provide compensation in order to survive economically.

69. Defendants Avellino, Corallo and Santoro are conspirators in this territorial allocation scheme. They take measures to enforce the allocation scheme and also make a quarterly collection of money from approximately two dozen of the garbage carters who are members of defendant PSI.

70. Among the specific acts of the defendants in furtherance of the combination, agreement and conspiracy alleged herein are the following:

(a) During the summer of 1982, in Suffolk County, defendants Avellino, Cannizzaro, Colatosti, Edward DeMatteo, Ferrante, Haynes, Schuman, Montesano, Joseph Pezza, Pasquale Pezza and Vespucci met, in varying groups, and communicated with each other by telephone, in order to eliminate competition between garbage collectors in Nassau and Suffolk Counties. They made agreements allocating customers among themselves and others. They reached agreement on monetary compensation to be paid to garbage collectors by other garbage collectors for the customers lost through competition in violation of the terms of the conspiracy.

(b) During the summer of 1982, defendants Rotundo, Maggio, Ernest DeMatteo, Miello and the other defendants mentioned in paragraph 70 (a) communicated with each other by telephone in order to prevent competition among garbage collectors in Nassau and Suffolk Counties. Among other things, they discussed the purchase of Sail Sanitation and the right of the purchasers to service the customers of Sail, undisturbed by

competition, and agreed on measures to eliminate any threatened competition for Sail's customers.

(c) On or about August 26, 1982, at the Waterside Inn in Northport, New York, defendant Anthony Vespucci, speaking on behalf of himself and defendants Charles Cannizzaro, Joseph Pezza, Raniero Calatosti and Vincent Montesano who were also present, told two other persons, in words or substance, "Today's the day to make the deal. . .no meetings after this." The purpose of the meeting was to resolve a dispute concerning the terms of the conspiracy. Various plans were proposed to compensate aggrieved garbage collectors for their loss of customers to other garbage collectors. For example, defendant Cannizzaro demanded that two other persons make the same bid on a carting contract that they had made the last time they bid.

(d) In the summer of 1983, defendant Ronga persuaded co-conspirators to rig a bid price in order to accommodate defendant Fazzini;

(e) In the summer of 1983, defendants Fazzini, Ronga and Avellino met and planned to fix and raise their residential rates after eliminating some competitors.

(f) During the summer of 1982, defendant Guerriero warned a garbage collector that his solicitation of two of Guerriero's customers was in violation of the terms of the conspiracy. He was also present at a meeting with defendant Colatosti and a co-conspirator while they negotiated their respective property rights to certain customers in accordance with the terms of the conspiracy.

(g) In the winter of 1982-83, defendants Fenster, Avellino and Corrigan, in a series of telephone conversations, planned obstructive tactics against garbage collectors who were not adhering to the terms of the conspiracy.

(h) On or about June 21, 1982, in Huntington, New York, defendant Schuman gave a rebel garbage collector, actively competing with members of the conspiracy, a note that said in part "you leave everybody alone, they will leave you alone."

(i) On or about March 30, 1983 defendant Corrigan asked Arthur Romersa, an official of the Department of Environmental Control of the Town of Huntington, to conduct an inspection at the Town landfill in order to harass a rebel garbage collector. On or about April 28, 1983, Corrigan told Romersa to set "Wednesday" for the landfill inspection for out of town garbage.

(j) During the spring and early summer 1983 defendant Avellino met with defendants Corallo and Santoro to discuss the garbage industry in Nassau and Suffolk Counties, including instances of competition in that industry, how to prevent such competition and the money collected from carting companies.

(k) During the period of the conspiracy, defendant 3M submitted the winning bid for the garbage collection service contracts let by the Amityville, Copiague and Wyandanch School Districts in Suffolk County and the Massapequa School District in Nassau County in accordance with the terms of the conspiracy. Bids submitted by other garbage collectors were rigged, sham or complementary.



(l) During the period of the conspiracy, defendant Ace submitted the winning bid for the garbage collection service contracts let by the Massapequa Park Residential District and the Hicksville School District in Nassau County in accordance with the terms of the conspiracy. Bids submitted by other garbage collectors were rigged, sham or complementary.

(m) During the period of the conspiracy and in accordance with the terms of the conspiracy, defendant Donno serviced the majority of the residential districts of North Hempstead Township, Nassau County, without any competition from other garbage collectors.

(n) During the period of the conspiracy and in accordance with the terms of the conspiracy, defendant Grand won the publicly bid contract for the provision of garbage collection services to the State University at Stony Brook by agreement with its co-conspirators .

(o) During the period of the conspiracy, defendant Five Counties won the publicly bid contract for the provision of garbage collection services to the Village of Freeport and retained said contract in a rebid in accordance with the terms of the conspiracy.

(p) On or about June 24, 1983 defendant Avellino met with defendant Petrizzo and another person at the Sweet Hollow Diner in Melville, New York, to settle a dispute over a carting customer in accordance with the dispute resolution terms of the conspiracy.

IX

CLAIM FOR RELIEF

71. Beginning sometime prior to 1977, the exact date being unknown to plaintiff, and continuing to the present, defendants and their co-conspirators have been engaged in a continuing combination and conspiracy in unreasonable restraint of the above described trade and commerce, in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

72. The combination and conspiracy has consisted of a continuing agreement, understanding, reciprocal commitment and concert of action among the defendants and co-conspirators, the substantial terms of which have been:

(a) to divide and allocate commercial, residential and governmental customers of garbage collection services among the defendants and co-conspirators;

(b) to rig bids for the provision of garbage collection services to governmental entities and entities and institutions of the federal government by the defendants and co-conspirators;

(c) to restrain each defendant, co-conspirators and other garbage collectors from competing for customers;

(d) to coerce, persuade and induce customers of the defendants and co-conspirators to refrain from changing garbage collectors.

73. For the purpose of forming and effectuating the combination, agreement, and conspiracy, the defendants and

co-conspirators have done those things which they combined, agreed, and conspired to do, including, among other things, the following:

(a) discussed from time to time with one another at meetings and in telephone conversations their respective rights to service particular customers;

(b) exchanged assurances that they would not solicit or compete for customers serviced by each other;

(c) met with, telephoned, or otherwise communicated with garbage collectors in order to convey agreements reached and to induce participation in such agreements;

(d) cooperated in the policing and enforcing of the combination, agreement and conspiracy by, among other things, investigating and reporting to each other instances of solicitation of customers served by the conspirators by garbage collectors who do not abide by the terms of the conspiracy;

(e) retaliated against garbage collectors who did not abide by the terms of the conspiracy by soliciting their customers.

74. Among the specific acts of the defendants in furtherance of the combination, agreement and conspiracy were those alleged in paragraph 70 above.

75. These violations of law have had the following effects, among others:

(a) Competition between and among defendants and co-conspirators has been restricted, suppressed and restrained;

(b) The price of garbage collection services to customers was raised and maintained at non-competitive levels; and

(c) Customers of garbage collectors have been deprived of free and open competition in the sale of such services.

76. Defendants' actions have deprived plaintiff of the benefit of competition in the sale of garbage collection services, and compelled plaintiff to pay substantially higher prices for such services.

77. As a result of the violations of law herein alleged, plaintiff has sustained damage in an amount which is presently undetermined. When the amount of damage has been ascertained, plaintiff will seek leave to amend this complaint.

#### FRAUDULENT CONCEALMENT

78. Despite the exercise of due diligence the State of New York and the class of governmental entities were unaware of and did not discover the facts underlying the claim set forth in this complaint until an investigation undertaken by the State of New York in 1982. The State of New York has exercised due diligence in trying to prevent the occurrence of frauds such as those perpetrated by defendants in the following manner. When entering into a contract to purchase garbage collection services, the State of New York and most of the governmental entities it represents use a sealed bid system, apprising each bidder of its non-collusion policy and requiring an affirmative non-collusion declaration from each bidder.

79. Defendant's fraudulent methods concealed the existence of their illegal activities and thereby prevented the State of New York and the governmental entities it represents from learning of them. Among the fraudulent methods used by defendants to avoid detection and prosecution were the following:

(a) filing with each bid proposal a knowingly false statement, subscribed and affirmed as true, certifying that the prices in the bid were arrived at without consultation or collusion with any competitor;

(b) engaging in other fraudulent acts not now known to plaintiff to prevent detection of their illegal scheme.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays that this Court:

A. Determine, pursuant to Rule 23(b) of the Federal Rules of Civil Procedure, that this action be maintained as a class action in accordance with the allegations and class definition set forth in paragraphs 5-10 herein.

B. Adjudge and decree that the action of defendants and their co-conspirators violate Section 1 of the Sherman Act, 15 U.S.C. § 1.

C. Enter judgment against defendants, jointly and severally, for three times the amount of damages suffered by the plaintiff, members of the class and the parens patriae group, in accordance with Section 4 and 4c of the Clayton Act, 15 U.S.C. §§ 15, 15c.

D. Enjoin defendants, their officers, directors, agents, employees, and all persons in active concert or participation with them, in accordance with Section 16 of the Clayton Act, 15 U.S.C. § 26 from directly or indirectly entering into, adhering to, participating in, maintaining, furthering, or enforcing any contract, combination, conspiracy, agreement, understanding, plan, arrangement, program, or concert of action among themselves, their co-conspirators, or with any other persons, corporations, business entities or organizations to allocate customers, territories or markets for any sale, offer to sell, or contract concerning the sale of private garbage collection services in the State of New York.

E. Order and direct defendants to distribute to their commercial and residential customers a printed statement informing each customer that any contract with a defendant, written or oral, for the provision of garbage collection services is voidable at the customer's option with 10 days notice to the defendant. The statement must include a list of alternative garbage collectors, a notice that the customer is free to contract with any garbage collector and a notice that the defendants will regularly publish the prices charged for their services in a daily newspaper in Nassau and Suffolk Counties.

F. Order defendants regularly to publish in a daily newspaper of general circulation in Nassau and Suffolk Counties a list of all commercial, private institutional and governmental entity customers, the prices charged and the terms of service,

e.g., volume of garbage collected and frequency of pick-up, and to publish a list of all residential areas served, the prices charged and the type of service provided.

G. Order defendants to furnish to the court and the Attorney General's Office, for a period of ten years, copies, or if oral to disclose the terms, of every contract of sale of equipment or routes or part of routes between or among the defendants, upon execution of the contract.

H. Order defendants to charge and bill all commercial and governmental customers in accordance with a standard unit, to wit, compacted cubic yard picked up, and to maintain records of the compacted cubic yards picked up from each commercial and governmental customer, and to print on each bill for each commercial customer a notice that such records are available for inspection.

I. Order defendants to:

- (1) publicize the final judgment of the Court entered in this action in a manner acceptable to the Court and reasonably calculated to inform all members of the parens patriae group of defendants' illegal acts;
- (2) furnish a copy of the final judgment of the Court entered in this action to each of defendants' officers, directors, salesmanagers, salespersons, delivery

persons, and employees having any discretion as to customer selection within New York, within thirty (30) days after entry of the final judgment;

(3) furnish a copy of the final judgment to each successor to those persons described in subparagraph (2) within thirty (30) days after each assumes such position, for a period of ten years after entry of judgment;

(4) for a period of ten years following entry of the final judgment in this action, permit any duly authorized representative of the Attorney General of the State of New York, on written request of the Attorney General and on reasonable notice:

(a) to have access during normal office hours to inspect and copy those books, records, ledgers, accounts, correspondence, memoranda and documents in the possession or under the control of each defendant which relate to any matters contained in the final judgment; and

(b) to interview, during normal working hours, officers, directors, partners, agents, or employees of such defendant regarding any such matters;



(5) for a period ten years following entry of the final judgment in this action and upon written request from the Attorney General of the State of New York submit such reports in writing, under oath if requested, with respect to any of the matters contained in the final judgment as may from time to time be requested;

J. Award plaintiff the cost of suit, including a reasonable attorney's fee, as provided for by Sections 4c and 16 of the Clayton Act, 15 U.S.C. §§ 15c, 26.

K. Grant Plaintiff such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, in accordance with Rule 38(b) of the Federal Rules of Civil Procedure, demands a trial by jury.

Dated: New York, New York  
January 22, 1985

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State of New York  
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